



## Report to the Auburn City Council

Action Item

4

Agenda Item No.

City Manager Approval

To: Mayor and City Council Members  
From: Bernie Schroeder, Director of Public Works  
By: Carrie Huff, P.E., Associate Civil Engineer  
Date: April 22, 2013  
Subject: Palm Avenue Sidewalk and Bicycle Lane Project – Right-of-Way Certification Consultant Services

### The Issue

Shall the City Council authorize Amendment 1 with Bender Rosenthal, Inc. for Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project?

### Conclusion and Recommendation

Staff recommends that the City Council, by **RESOLUTION**, authorize the Director of Public Works to execute Amendment 1 with Bender Rosenthal, Inc. for Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project in an amount not to exceed \$29,100.

### Background

On March 11, 2013, the City Council authorized a professional services agreement with Bender Rosenthal, Inc. (BRI) for appraisal services for the Palm Avenue Right-of-Way Certification process. Federal aid projects administered through Caltrans require the acquisition of right-of-way and right-of-way certification prior to submitting for the authorization to construct. As such, the City contracted with BRI to perform these services. Initially, staff anticipated completing portions of the right-of-way certification. However, Caltrans requires specific qualifications to complete the right-of-way certification work. Ultimately, due to the critical nature of the project schedule, staff requested that BRI submit a proposal to complete the entire right-of-way certification process. Also, during the appraisal process, the scope of the right-of-way certification services was further refined based on the number of properties involved in the project and the estimated value of the land. Waiver Valuations are required for parcels valued at less than \$10,000 and Summary Appraisals with independent appraisal review are required for any parcels that are valued over \$10,000. In the case of properties along Palm Avenue, there are five Waiver Valuations and two parcels that qualify for Summary Appraisal; one because the value is greater than \$10,000 and the other because it is a publicly owned parcel that does not have market sales to use for comparison purposes. Additionally, the BRI scope of work has been updated to include acquisition services which is the negotiation process required for federal aid projects and the submittal of the right-of-way certification documentation for Caltrans approval. This work will all be completed under the subject Amendment 1.

### Fiscal Impact

Bender Rosenthal, Inc. had an agreement for \$5,000 to allow for immediate initiation of the right-of-way certification work. An additional \$35,000 was authorized on March 11, 2013 for right-of-way appraisal services. Amendment 1 to complete the right-of-way certification process, including acquisition services and the Right-of-Way Certification, is \$29,100 for a total contract amount of \$69,100.

### Attachments:

Resolution/Amendment 1 – Bender Rosenthal, Inc.

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RESOLUTION NO. 13-  
RESOLUTION AUTHORIZING AMENDMENT 1 WITH BENDER ROSENTHAL, INC.  
FOR RIGHT-OF-WAY CERTIFICATION SERVICES FOR THE PALM AVENUE  
SIDEWALK AND BICYCLE LANE PROJECT

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the Director of Public Works to execute Amendment 1 with Bender Rosenthal, Inc. for required Right-of-Way Certification services for the Palm Avenue Sidewalk and Bicycle Lane Project in an amount not to exceed \$29,100.

A true and correct copy of Amendment 1 is attached hereto as Exhibit "A-1."

DATED: April 22, 2013

\_\_\_\_\_  
Kevin Hanley, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular session meeting of the City Council of the City of Auburn held on the 22<sup>nd</sup> day of April 2013 by the following vote on roll call:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

**AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT**

(City of Auburn and Bender Rosenthal, Inc.)

This Amendment No. 1 ("Amendment") to Professional Services Agreement ("Agreement") is made on this 22<sup>nd</sup> day of April, 2013 at Auburn, California, by and between the City of Auburn, a municipal corporation, 1225 Lincoln Way, Auburn, California 95603 ("City") and Bender Rosenthal, Inc., 4400 Auburn Boulevard, Suite 102, Sacramento CA 95841 ("Contractor").

This "Amendment" modifies the original "Agreement" between the "City" and the "Contractor" dated March 11, 2013 in the following fashion:

- A. "City" and "Contractor" desire to amend the "Agreement" by modifying section 3.1 – Scope of Services as set forth in "Consultant's" April 12, 2013 proposal to "City" attached hereto as Exhibit A-1 and incorporated herein by this reference.
- B. "City" and "Contractor" desire to amend the "Agreement" by modifying the total compensation and costs payable to "Consultant" under this "Agreement" to a not-to-exceed sum of \$69,100.00.

Initials: (City) \_\_\_\_\_ (Contractor) 

04/16/13

Page 1 of 2

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
**City of Auburn**

By: \_\_\_\_\_  
Bernie Schroeder  
Director of Public Works

Date: \_\_\_\_\_

**"Consultant"**  
**Bender Rosenthal, Inc.**

By: *[Signature]*  
Name: *Cyndee Bender Reents*  
Title: *President*

Date: *4/16/13*

By: *[Signature]*  
Name: *David B. Wraa*  
Title: *Vice President*

Date: *4/16/13*

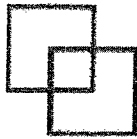
Attest:

By: \_\_\_\_\_  
Amy Lind, City Clerk

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Michael G. Colantuono, City Attorney



April 12, 2013

City of Auburn - Department of Public Works  
Attn: Carie Huff, P.E.  
Associate Civil Engineer  
1225 Lincoln Way, Room 3  
Auburn, CA 95603

**ORIGINAL BY EMAIL:**  
Chuff@auburn.CA.gov

Subject: Amendment 1  
Scope/Cost Proposal (Revision No. 3)  
Safe Routes to School Project  
Palm Avenue, Auburn, CA

Dear Ms. Huff:

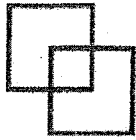
Per your request, we have prepared this revised scope and cost proposal based on email and telephone conversations to reflect the current scope of Right of Way Services Bender Rosenthal Inc. will be providing associated with your Palm Avenue Safe Routes to School, Local Assistance (off-system) Project. The table on page six (6) gives a more thorough breakdown of the specific tasks involved in delivery of our portion of the Right of Way components of your project with costs attributable to each of them.

Please note the specific changes to our proposed and existing contracts which have precipitated the need for this revision:

- Parcel/Grantor count increased from five (5) to seven (7);
- The Auburn School District, and David Dwelle parcels will require use of Summary Appraisal Reports, and the Waiver Valuation process will now be used for five (5) of the seven (7) parcels;
- Right of Way Data Sheet (parcel value/cost data sheet for budgeting purposes) not required;
- Two (2), as opposed to three (3) Appraisal Reviews will be required;
- Acquisition Services are now included in the scope;
- Right of Way Certification is now included in the Scope; and
- Title and Escrow Support will be the responsibility of the City of Auburn.

## **RIGHT OF WAY SCOPE OF SERVICES**

Right of Way Program, Acquisition, and Appraisal Services Management will be performed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way and Local Assistance Project Delivery Manuals, as applicable. A general discussion of the scope is as follows:



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## **TASK 1 – RIGHT OF WAY MANAGEMENT**

This task includes attendance at monthly (or other interval as specified by client) Project Development Team (PDT) meetings, monthly schedule and progress updates, and coordination of all right of way task efforts with the Client and Right of Way teams throughout the life of the project.

### **Deliverables:**

- Facilitation of weekly BRI staff meetings through the appraisal and acquisition phases of the project;
- Attend three (3) or more PDT meetings as may be directed by Client;
- Coordination of Appraisal and Acquisition Services to provide deliverables to Client
- Providing Monthly progress updates to PDT team and client staff; and
- Coordinating design issues between engineering team and Right of Way team.

## **TASK 2 – RIGHT OF WAY PROGRAM**

Develop requisite documents (per Code of Federal Regulation, Uniform Act, FHWA and Caltrans policy and specifications) to be approved by Client and Caltrans for use in the appraisal and acquisition of real property interests. Coordinate Client and Caltrans interface including communication with Right of Way Engineering and Design Engineering firms. This task also includes parcel/project tracking and monthly (or to Client specifications) reporting to Client by Project Controller

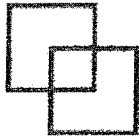
## **TASK 3 – APPRAISAL AND VALUATION SERVICES**

BRI will develop complete appraisals for the client that will state the estimated fair market value of the fee simple or easement interest (as per Clients direction) in each referenced property. Our scope anticipates the need for two (2) Summary Appraisal Reports (David Dwelle and Auburn Unified School District Properties) and five (5) non-complex Minimum Value Estimates (Waiver Valuations). This document highlights that Client is advised that use of Waiver Valuations (Minimum Value Estimates) can be used when the proposed acquisition is less than \$10,000 and condemnation actions are not anticipated (court proceedings are to be supported by the use of Summary Appraisal Reports).

The Summary Appraisal Reports and Waiver Valuation Estimates will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Jurisdictional exceptions may apply in some cases.

Plats and legal descriptions for each of the properties to be appraised will be provided to BRI by the City of Auburn. Some of the items that may affect the appraisal and valuation process include:

- Complexity of the valuation;



- Impact of the interests to be acquired (e.g. Fee Interests, Permanent Easements, Temporary Construction Easements, and/or Public Utility easements);
- Damage Analysis (Severance Damage, Cost to Cure, etc.); and
- The analysis excludes crop damage analysis as this does not appear to apply.

#### **CHANGE OF SCOPE**

A change in scope may result in the following instances:

- Comments received after appraisal review complete;
- A change in engineering after property has been inspected by appraiser, requiring a new inspection;
- A change in engineering after completion of the appraisal;
- Addition of a parcel;
- Addition of easements, or other property rights;
- An increase in the number of damage analyses required; and
- An appraisal requiring additional expertise, such as an arborist, or fixture appraiser.

#### **Assumptions:**

- Attendance at Client called meetings will be at standard mileage and hourly rates.
- Bi-lingual services are not included but are available via scope change.

#### **Deliverables:**

- Three copies of the Summary Appraisal Report and Waiver Valuations that meet all State and Federal Standards.

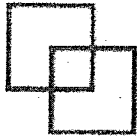
#### **TASK 4 – INDEPENDENT APPRAISAL REVIEW**

An independent review appraiser, either on staff or under contract to BRI, will be responsible for providing the following required appraisal review services for the two (2) Summary Appraisal Reports:

#### **Deliverables:**

- Upon receiving the Appraisal Report, an office review of the Report using the various standards prescribed by the Federal and State Uniform Acts, FHWA, CALTRANS appraisal procedures, Uniform Standards of Professional Appraisal Practice and California Eminent Domain codes will be completed;
- Upon satisfactory completion of the Appraisal Report a Review Report and Certificate Report will be prepared.

Note: Waiver Valuation (parcels under \$10,000) do not require outside independent review. This proposal anticipates the preparation of two (2) Summary Appraisal Reports and five (5) Waiver



Valuations (Minimum Value Estimates) based on the information supplied to BRI by Client and Caltrans.

## **TASK 5 - ACQUISITION SERVICES**

Bender Rosenthal, Inc. proposes to use all necessary contracts, conveyance documents and escrow instructions developed as stated above, necessary to make offers based on your Agencies' process. We will meet with the owners, and convey documents until acceptance or impasse is reached.

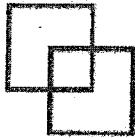
Steps within the acquisition process are outlined below:

1. Review of the project concept and design with staff and other consultants.
2. Review of appraisals, title reports, maps and descriptions of the required parcels.
3. Field review the project with the Project Manager or other designated person.
4. Preparation of right-of-way contracts and other acquisition documents.
5. Meet with property owners to discuss the project in general; review of maps and legal descriptions; confirm information about occupants/owners and make the official First Written Offer to owner. Acquire tenant consent if required.
6. Acquisition activities are based on settlement by the third (3<sup>rd</sup>) contact either in person or by telephone. A recommendation to the Agency will be made after *impasse* has been reached. To reach *impasse* there are specific requirements as follows:
  - A. Go through the *acquisition steps* outlined below; plus
  - B. Make at least three contacts with owner (personal call, letter or phone call) in any combination; plus
  - C. Spend up to eight hours working on the parcel acquisition; and
  - D. Respond to property owner inquiries verbally and in writing within two business days.

The acquisition steps when offering compensation to the property owner include:

- A. Owner accepts offer. (Close)
- B. Owner rejects offer.
  1. Owner refuses to counter. (Impasse)
  2. Owner makes counter proposal.
    - a. The Client accepts counter. (Close)
    - b. The Client rejects counter. (Impasse)
    - c. The Client makes new offer.
  3. Owner accepts new offer. (Close)
  4. Owner does not accept new offer. (Impasse)
  5. Deliver signed right-of-way contract and signed and acknowledged grant deed for closed transaction, or deliver a memorandum explaining impasse.
  6. Final File Closeout Report, including transfer of all pertinent correspondence and files, to the City of Auburn or as further directed by Client.





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**Deliverables:**

- Acquisition of up to (7) Permanent Easement and/or Fee title interests and seven (7) TCE's from seven (7) Grantors.

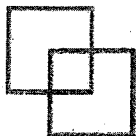
**TASK 6 – RIGHT OF WAY CERTIFICATION:**

BRI will prepare a Right of Way Certification for project, meeting State and Federal Regulations and conforming to 23 CFR 635.309(c) (2) and/or (3) using Caltrans Local Agency Exhibit "17-EX-18."

**Deliverables:**

- BRI will develop one (1) draft Certification for Client/Caltrans review and one (1) final document for Client's submittal to Caltrans Local Assistance, District 03, Marysville.

**NOTE:** \*The scope of this proposal *excludes* the following Task to be completed by Client; Title and escrow support services including direct communication with title company and escrow officer.



**SCHEDULE AND FEES**

BRI proposes to deliver the R/W phase within five (5) months from the Notice to Proceed Date (March 7, 2013) for a Target Right of Way Certification date of August 7, 2013. Our proposed fee based on scope provided is as follows:

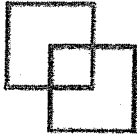
Task	Description	Total
1. R/W Management	30 hours @ \$175/hour	\$ 5,250
2. Right of Way Program/Project Control	50 hours @ \$150/hour	\$ 7,500
3. Appraisal Services: Two (2) Summary Appraisal Reports and six Waiver Valuations – (Permanent and/or Temporary Easements, or Fee Title assuming values <less> than \$10,000 per acquisition)	Two (2) Summary Appraisal @ \$3,500 Five (5) Waiver Valuations @ \$2,500/each	\$ 7,000 \$12,500
4. Independent Appraisal Review	Two (2) reviews @ \$1,500/each	\$ 3,000
5. Acquisition Services	Seven (7) Negotiations @ \$3,800/each	\$26,600
6. Right of Way Certification	One (1) draft and one (1) final	\$ 5,000
7. Administrative Services	25 hours @ \$90/hour	\$ 2,250
<b>Total Budget:</b>		<b>\$69,100</b>

A previous Scope of Work approved by City Council on March 13, 2013, included the following tasks and costs:

Task	Description	Total
1. R/W Management	30 hours @ \$175/hour	\$ 5,250
2. Right of Way Program/Project Control	50 hours @ \$150/hour	\$ 7,500
3. Appraisal Services: (Permanent/Temporary Easements, or Fee Title assuming values greater than \$10,000 per proposed acquisition)	Three (3) Summary Appraisal @ \$3,500 Two (2) Waiver Valuations @ \$2,500/each	\$10,500 \$5,000
4. Independent Appraisal Review	Three (3) review @ \$1,500	\$ 4,500
5. Administrative Services	25 hours @ \$90/hour	\$ 2,250
<b>Total Budget:</b>		<b>\$35,000</b>

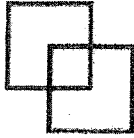
Additionally, the City of Auburn approved a Professional Services Agreement in the amount of \$5,000 to allow BRI to begin the Right-of-Way appraisal process as soon as possible.

Therefore, the final cost of Amendment 1 is \$29,100 ( $\$69,100 - \$35,000 - \$5,000 = \$29,100$ ).



The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks;
2. No expert witness testimony;
3. Client to provide Preliminary Title Reports, Title and Escrow support and coordination;
4. BRI to review existing easements and permits;
5. BRI to review legal descriptions and plats for the project;
6. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above spreadsheet;
7. No Coordination with State or Federal right of way departments, other than listed in scope;
8. This fee assumes that no significant structures or improvements will be acquired;
9. Crop damages are excluded as none appear to apply;
10. Any external audit support will be billed on a time and material basis, as well as the following:
  - a. A change in engineering once the acquisition process has begun.
  - b. Addition of a parcel.
  - c. Addition of easements, or other property rights.
  - d. Any additional professional expertise.
11. No temporary or permanent relocations of persons or personalty required;
12. Condemnation support including but not limited to Resolutions of Necessity, First and Second Level Reviews available for additional fee; and
13. BRI will prepare transmittal and forward closed files to Agencies Project Manager.



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**2013 FEE SCHEDULE**

Below are our standard 2013 rates for additional services required. These costs may vary depending on changes in the scope in work:

Cydney G. Bender, MAI	\$210/hr.*
David Wraa, MAI	\$210/hr.*
Designated Members of the Appraisal Institute (MAI/SRA)	\$210/hr.*
Senior Project Manager	\$175/hr.
Quality Control Auditor	\$160/hr.
Senior Appraiser	\$135/hr.
Relocation Specialist	\$145/hr.
Senior Acquisition Agent	\$135/hr.
Acquisition Agent	\$120/hr.
Appraiser	\$105/hr.
Other Associated Professional Staff	\$ 80/hr.
Researcher's	\$ 80/hr.
Administrative/Production	\$ 70/hr.

\*\$420 per hour for court or briefing preparation, depositions, any pre-trial conferences, court appearances, etc., should these ever become necessary.

Rates for Appraisal services vary based on land use and type of acquisition. Appraisal and/or Valuation services are generally completed on a lump sum basis rather than hourly rate.

All direct and indirect costs will be billed at cost plus 10%.